No. 85-1977

Supreme Court, U.S.
FILED
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

OIL INSURANCE LIMITED,

Petitioner,

—against—

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO,

—and—

A.I.U. INSURANCE COMPANY, AMERICAN HOME INSURANCE COMPANY, BIRMINGHAM INSURANCE COMPANY, CHUBB & SON INC., FEDERAL INSURANCE COMPANY, FROUDE AND COMPANIES, GRANITE STATE INSURANCE COMPANY, HARBOR INSURANCE COMPANY, HIGHLANDS INSURANCE COMPANY, INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, LANDMARK INSURANCE COMPANY, LEXINGTON INSURANCE COMPANY, MISSION INSURANCE COMPANY, NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., NEW HAMPSHIRE INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, SEA INSURANCE COMPANY, LTD., SUN INSURANCE COMPANY, AND THE TRAVELERS INSURANCE COMPANY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA

BRIEF FOR RESPONDENT THE TRAVELERS INSURANCE COMPANY IN OPPOSITION

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June 27, 1986

12 pp

QUESTIONS PRESENTED

1. In a declaratory judgment suit alleging that hundreds of insurers have coverage obligations to a common insured, whether the California courts properly exercised jurisdiction over a Bermuda-based insurance company that has collected 15 percent of its premiums from companies headquartered in California and that has paid over $25 million on claims for losses occurring in that State.

2. Whether, in such a suit, the insurance companies named as defendants may cross-claim for allocation under California law against the insured's captive insurance company, or whether such suit is barred by reason of an arbitration agreement between the insured and its captive insurer.*

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* The caption of the case in the Court contains the names of all the parties to the proceedings in the court below. The Travelers Corporation is the parent corporation of The Travelers Insurance Company. The following are subsidiaries (except wholly owned subsidiaries) and affiliates of The Travelers Insurance Company: The Travelers Indemnity Company; The Travelers Life and Annuity Company; The Travelers Life Insurance Company; The Travelers Indemnity Company of Rhode Island; The Phoenix Insurance Company; The Charter Oak Fire Insurance Company.

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STATEMENT OF THE CASE

The Shell Oil Company ("Shell") has sued approximately 250 of its insurers in a declaratory judgment action in the California Superior Court for San Mateo County seeking a comprehensive declaration of coverage obligations with respect to Shell's possible liability for clean-up costs at waste disposal sites in Colorado and California. The defendants are located variously in the United States, the United Kingdom, Germany and Switzerland, and issued policies to Shell at various times between 1942 and 1983. The only Shell insurer that Shell did *not* sue is the Petitioner Oil Insurance Ltd. ("O.I.L."), a captive insurer which Shell owns as a shareholder with other oil companies that are also stockholder-insureds. Many of the 250 insurers named by Shell in the California action have served cross-claims against O.I.L., seeking allocation of indemnity and defense costs under the principles articulated in *Aetna Casualty & Surety Co.* v. *Certain Underwriters at Lloyds of London,* 56 Cal. App. 3d 791, 129 Cal. Rptr. 47 (1976).

O.I.L. moved to quash service and to dismiss the cross-claims for want of personal jurisdiction on January 4, 1985, asserting both that it lacked "minimum contacts" with the State of California and that its insurance contract with Shell provided that arbitration in London is the exclusive mechanism for contesting the scope of coverage provided by O.I.L.

The San Mateo Superior Court found that O.I.L. was not subject to California jurisdiction but noted that Shell had selected California as the forum for a comprehensive determination of its insurance rights under numerous policies "while attempting to exclude from the state court jurisdiction an important party to the litigation, namely O.I.L." Accordingly, "in the interest of affording comprehensive

equitable relief to all parties", the trial court stayed all proceedings pending either O.I.L.'s submission to jurisdiction or the conduct of arbitration proceedings between Shell and O.I.L. Travelers Supplemental Appendix at 1a.* The Court of Appeal of the State of California *reversed,* holding that California had personal jurisdiction over O.I.L. in the coverage dispute (11a). The Supreme Court of California denied O.I.L.'s petition for review (13a).

In an argument improperly addressed to the merits of the cross-claims, O.I.L.'s Statement of the Case argues that the O.I.L. policies are inapplicable because they cover only occurrences that commence during the policy period. Petition at 3-4. Shell's complaint, however, does not date (or even define) the events constituting the occurrence or occurrences. The Travelers Insurance Company accepts the accuracy of O.I.L.'s Statement of the Case from the last paragraph beginning on page 4.

ARGUMENT

O.I.L. asserts that its contacts with the State of California are too attenuated and insubstantial to support the reasonable expectation that O.I.L. would be subject to suit in California. In aid of its Petition, O.I.L. claims spurious affinities between the jurisdictional issues in this case and a different California case in which this Court has issued a writ of certiorari. *See Asahi Metal Industry Co., Ltd.* v. *Superior Court,* 39 Cal. 3d 35, 702 P.2d 543, 216 Cal. Rptr. 385 (1985), *cert. granted,* 106 S. Ct. 1258 (1986). In *Asahi,* jurisdiction over a Japanese company was based upon the use of an allegedly defective Japanese-made com-

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* Page citations to: "—a" refer either to the appendix to the Petition or, where specifically noted, to the Supplemental Appendix to this Response.

ponent in a product sold to consumers in the United States. O.I.L.'s extensive and systematic contacts with the California forum offer no useful parallels with *Asahi* for purposes of review by this Court: *

> A. Since 1972, O.I.L. has collected over $145 million in premiums from three California shareholder-insureds and has provided to them worldwide coverage, including liability for risks in California. California companies paid approximately fifteen percent of all premiums collected by O.I.L. since 1972.
>
> B. Many of O.I.L.'s shareholder-insureds do business in California. O.I.L. sends agents into California to adjust claims on losses occurring in California, and has paid over $25 million for such losses.
>
> C. Shell itself has paid $50 million in premiums to O.I.L. since 1976. Shell has averred in papers filed in the declaratory judgment action that it "has had substantial operations in California since prior to 1975 . . . [and that] [o]ne of the two sites that are the subject of the underlying claims is in California."

O.I.L. asserts that the California courts rel[ied] upon *Asahi* and proceeds to adduce parallels between the two cases. Petition at 8-9. Such parallels were not drawn by the California courts, however, which did not rely on *Asahi* at all. The Court of Appeal referenced *Asahi* twice, but only (a) to quote a Third Circuit decision discussed in *Asahi* and (b) to illustrate by example that there are more jurisdictional cases dealing with manufactured goods than with insurance (5a). The opinion then proceeds (5a-10a)

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* Most of the jurisdictional facts are the subject of stipulation. *See* 2a.

to build its analysis and its holding upon insurance cases and the stipulated jurisdictional facts. O.I.L. cannot use *Asahi* as a vehicle for reaching this Court.

O.I.L.'s argument that the public interest requires that overseas mutual insurers be exempt from "burdensome litigation in the United States courts" does not merit extended rebuttal.* Shell and the other shareholders of O.I.L. have caused O.I.L. to enter into arbitration agreements with themselves in their role as policyholders. As a result, O.I.L. argues, Shell's other insurers cannot litigate O.I.L.'s allocation and contribution duties anywhere but in London arbitration proceedings—as though Shell's other insurers are somehow bound by an arbitration agreement that none of them has ever signed.

Thus Shell's captive insurer seeks to insulate itself from the operation of California's defense-sharing and insurance-allocation rules, while Shell seeks global resolution of its coverage disputes with everyone else. Such an arrangement serves no public policy.

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* O.I.L. asserts that it did not reasonably anticipate being haled into an American court; however, O.I.L. is not a stranger to coverage litigation in the United States, having participated as a party in *Odeco, Inc.* v. *Avondale Shipyards, Inc.*, 663 F.2d 650 (5th Cir. 1981).

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Dated: New York, New York
June 27, 1986

Respectfully submitted,

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June 27, 1986

Order of the Superior Court of the State of California
In and For the County of San Mateo
(April 15, 1985)

SUPERIOR COURT, STATE OF CALIFORNIA,

COUNTY OF SAN MATEO

No. 278953

PRESENT: WILLIAM LANAM,

Judge of the Superior Court

SHELL OIL COMPANY

v.

ACCIDENT & CASUALTY INSURANCE CO. OF WINTERTHUR, *et al.*

1. Cross-defendant Oil Insurance Limited's Motion to Quash Service and Dismiss for lack of Personal Jurisdiction.
2. Defendants European General Reinsurance Co. of Zurich and Swiss Reinsurance Company-Zurich's Motion to Quash Service of Summons and Dismiss the Complaint.

Submitted March 13, 1985

DECISION

It is the order of this Court that the motion of defendants European General Reinsurance Company of Zurich and Swiss Reinsurance Company-Zurich (the Zurich insurers) to dismiss the complaint for lack of in personam jurisdiction

is hereby denied. Defendants are granted thirty days to demur, answer, or otherwise plead.

It seems apparent to this Court that Shell Oil has selected the fair County of San Mateo in the bountiful State of California as a forum to determine its rights and obligations under various contracts of insurance with numerous companies while attempting to exclude from the state court jurisdiction an important party to the litigation, namely, O.I.L. At the time of its forum selection Shell Oil was aware that its contract with O.I.L. had selected a forum far removed from the Western Coast of the United States.

By virtue of the relief being sought by Shell Oil, its relationship with O.I.L. as an insured, and in the interest of affording comprehensive equitable relief to all parties, the present proceedings will be stayed pending either the submission by O.I.L. to the jurisdiction of this Court in the present proceedings, or the completion of London arbitration proceedings dictated by the contract between Shell Oil and O.I.L.

(ENDORSED)
FILED
APR 18 1985

MARVIN CHURCH, county clerk
By ANNA MAES
Deputy Clerk